

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

WILLIAM MARTIN HEREDIA,

Plaintiff,

v.

J. THOMAS, et al.,

Defendants.

Case No. 1:22-cv-01439-SAB (PC)

ORDER DIRECTING CLERK OF COURT  
TO TERMINATE ACTION PURSUANT TO  
PLAINTIFF'S MOTION TO VOLUNTARILY  
DISMISS THE ACTION

(ECF No. 13)

Plaintiff William Martin Heredia is proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983.

On February 24, 2023, Plaintiff filed a motion to voluntarily dismiss this action pursuant to Federal Rule of Civil Procedure 41.

Plaintiff has a right to voluntarily dismiss this case under Rule 41 of the Federal Rules of Civil Procedure. In Wilson v. City of San Jose, the Ninth Circuit explained:

Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534 (9th Cir. 1987)). A plaintiff may dismiss his action so long as the plaintiff files a notice of dismissal prior to the defendant's service of an answer or motion for summary judgment. The dismissal is effective on filing and no court order is required. Id. The plaintiff may dismiss some or all of the defendants, or some or all of his claims, through a Rule 41(a)(1) notice. Id.; Pedrina v. Chun, 987 F.2d 608, 609-10 (9th Cir. 1993). The filing of a notice of voluntary dismiss with the court automatically terminates the action as to the defendants who are the subjects of the notice. Concha, 62 F.2d at 1506. Unless otherwise

1 stated, the dismissal is ordinarily without prejudice to the plaintiff's right to commence  
2 another action for the same cause against the same defendants. Id. (citing McKenzie v.  
3 Davenport-Harris Funeral Home, 834 F.2d 930, 934-35 (9th Cir. 1987)). Such a dismissal  
leaves the parties as though no action had been brought. Id.

4 Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997). No defendant has filed an answer  
5 or motion for summary judgment in this case. Therefore, Plaintiff's notice of dismissal is  
6 effective as of the date it was filed, and this case shall be closed.

7 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court is directed to terminate  
8 and close this action pursuant to Plaintiff's motion for voluntarily dismissal.

9  
10 IT IS SO ORDERED.

11 Dated: February 27, 2023

  
UNITED STATES MAGISTRATE JUDGE